IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11217 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HANIFMIYA USMANMIYA SAIYAD

Versus

VADODARA MUNICIPAL CORPN.

Appearance:

1. Special Civil Application No. 11217 of 2003

MR SK BUKHARI for Petitioner No. 1-28

MR PRANAV G DESAI for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 05/08/2003

ORAL JUDGEMENT

Rule. Service of rule is waived by learned

advocate Shri P.G. Desai appearing for the respondent. At the request of the learned advocates, the petition is finally heard today.

2. The petitioners have been aggrieved by an order dated 5.4.2003 passed by the Jt. District Judge, Vadodara, in Regular Civil Appeal No. 41/2003. The said appeal had been filed against an order dated 23.5.2003 passed by the competent authority under the provisions of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as 'Public Premises Eviction Act').

3. The facts giving rise to the present petition, in a nutshell, are as under :

3.1 The petitioners had put up their hutments on land not belonging to them. In 1989, due to heavy rains, their hutments were destroyed and as the petitioners were without any shelter, the petitioners were temporarily permitted to stay in a building named "Renbasera" belonging to the respondent corporation. As the petitioners were in difficulty, the respondent corporation did a favour to the petitioners by permitting them to occupy the said building. The petitioners ought to have vacated the premises given to them by the respondent within reasonable period but, instead of vacating the premises, in 1997, they filed Regular Civil Suit No. 619/97 in the court of the Civil Judge (S.D.), Baroda, praying for a decree for permanent injunction restraining the respondent from evicting them from the said building. In the said suit, an application below Ex. 5 had been filed for a temporary injunction. The said application below Ex. 5 was ultimately granted on a condition that the petitioners should not be evicted except in accordance with law. The said suit is still pending.

3.2 So as to get vacant possession of the premises in question, the respondent had initiated action under the provisions of Public Premises Eviction Act. After hearing the concerned parties, by an order dated 27.5.2003, the competent authority passed an order directing the petitioners to vacate the premises on or before 7.7.2003. Being aggrieved by the said order, the petitioners had filed Regular Civil Appeal No. 41/2003. The said appeal has also been dismissed by an order dated 5.7.2003.

3.3 The said order passed in the appeal has been challenged in this petition.

4. Learned advocate Shri Bukhari has fairly submitted that during this period of monsoon, it would be very difficult for the petitioners to get any accommodation elsewhere. It has been submitted by him that the petitioners are ready and willing to vacate the premises but they require some time and only on humanitarian ground some time may be granted to the petitioners. It has been also submitted by him that all the petitioners are ready and willing to give an undertaking to this court that they would vacate the premises within the period, which might be granted to them by this court.

5. On the other hand, learned advocate Shri P.G. Desai appearing for the respondent corporation has submitted that no time should be granted to the petitioners because, by an order dated 5.7.2003, the appeal filed by the petitioners against the order passed by the competent authority under the Public Premises Eviction Act has been dismissed. it has been submitted by him that only on humanitarian ground the respondent had given temporary accommodation to the petitioners when their hutments had been destroyed due to heavy rains and the petitioners do not have any legal right to retain possession of the premises. It has been, therefore, submitted that as no legal right of the petitioners has been violated by the respondent corporation and more particularly when the orders passed by the competent authority as well as the appellate authority cannot be found to be wrong on any count, this petition deserves rejection.

6. I have heard the learned advocates. It is true that the learned advocate appearing for the petitioners could not find any fault with the order passed by the appellate authority or the competent authority and prayed for time without making futile efforts to argue the petition. However, looking to the circumstances in which the petitioners are staying at present, on humanitarian ground, the petitioners are permitted to occupy the premises in question till 15.10.2003 on a condition that each and every petitioner files an undertaking to the effect that they shall vacate the premises occupied by them on or before 15.10.2003. The undertaking shall be filed on or before 18.8.2003. Needless to say that if an undertaking is not filed by any of the petitioners, the said petitioner shall be evicted on 19.8.2003 and in any case if the petitioners do not vacate the premises on 15.10.2003 as undertaken by them, the respondent corporation shall be entitled to evict the petitioners on

16.10.2003.

7. In view of the above direction, the petition stands disposed of subject to above observations. Rule is discharged with no order as to costs.

(A.R. Dave, J.)

(hn)